

## INFORMATION FOR THE SMALL CLAIMS PLAINTIFF

This information sheet is written for the person who sues in the small claims court. It explains some of the rules of and some general information about the small claims court. It may also be helpful for the person who is sued.

### WHAT IS SMALL CLAIMS COURT?

Small claims court is a special court where disputes are resolved quickly and inexpensively. The rules are simple and informal. The person who sues is the **plaintiff**. The person who is sued is the **defendant**. In small claims court, you may ask a lawyer for advice before you go to court, but you cannot have a lawyer in court. Your claim cannot be for more than \$5,000 (\*see below). If you have a claim for more than this amount, you may sue in the civil division of the municipal court or you may sue in the small claims court and give up your right to the amount over \$5,000. You cannot, however, file more than two cases in small claims court for more than \$2,500 each during a calendar year.

### WHO CAN FILE A CLAIM?

1. You must be at least *18 years old* to file a claim. If you are not yet 18, you may ask the court to appoint a **guardian ad litem**. This is a person who will act for you in the case. The guardian ad litem is usually a parent, a relative, or an adult friend.
2. A person who sues in small claims court must first make a **demand** if possible. This means that you have asked the defendant to pay, and the defendant has refused. If your claim is for possession of property, you must ask the defendant to give you the property.
3. Unless you fall within two technical exceptions, you must be the **original owner** of the claim. This means that if the claim is assigned, the buyer cannot sue in the small claims court. **You must also appear at the small claims hearing yourself unless you filed the claim for a corporation or other entity that is not a natural person.**
4. If a corporation files a claim, an employee, officer, or director must act on its behalf. If the claim is filed on behalf of an association or other entity that is not a natural person, a regularly employed person of the entity must act on its behalf. A person who appears on behalf of a corporation or other entity must not be employed or associated solely for the purpose of representing the corporation or other entity in the small claims court. **You must file a declaration with the court to appear in any of these instances.**

### WHERE CAN YOU FILE YOUR CLAIM?

You must sue in the right court and **judicial district**. This rule is called **venue**.

If you file your claim in the wrong court, the court will dismiss the claim unless all defendants personally appear at the hearing and agree that the claim may be heard.

The right district may be any of these:

1. Where the defendant lives or where the business involved is located;
2. Where the damage or accident happened;
3. Where the contract was signed or carried out;
4. If the defendant is a corporation, where the contract was broken;
5. For a retail installment account or sales contract or a motor vehicle finance sale:
  - a. Where the buyer lives;
  - b. Where the buyer lived when the contract was entered into;
  - c. Where the buyer signed the contract;
  - d. Where the goods or vehicle are permanently kept.

### SOME RULES ABOUT THE DEFENDANT (including government agencies)

1. You must sue using the defendant's *exact legal name*. If the defendant is a business or a corporation and you do not know the exact legal name, check with: the state or local licensing agency; the county clerk's office; or the Office of the Secretary of State, corporate status unit. Ask the clerk for help if you do not know how to find this information. If you do not use the defendant's exact legal name, the court may be able to correct the name on your claim at the hearing or after the judgment.
2. If you want to sue a government agency, you must first file a claim with the agency before you can file a lawsuit in court. Strict time limits apply. If you are in a Department of Corrections or Youth Authority facility, you must prove that the agency denied your claim. Please attach a copy of the denial to your claim.

### HOW DOES THE DEFENDANT FIND OUT ABOUT THE CLAIM?

You must make sure the defendant finds out about your lawsuit. This has to be done according to the rules or your case may be dismissed or delayed. The correct way of telling the defendant about the lawsuit is called **service of process**. This means giving the defendant a copy of the claim. **YOU CANNOT DO THIS YOURSELF**. Here are four ways to serve the defendant:

1. **Service by a law officer** — You may ask the marshal or sheriff to serve the defendant. A fee will be charged.
2. **Process server** — You may ask anyone who is *not* a party in your case and who is at least *18 years old* to serve the defendant. The person is called a **process server** and must personally give a copy of your claim to the defendant. The person must also sign a proof of service form showing when the defendant was served. Registered process servers will do this for you for a fee. You may also ask a friend or relative to do it.
3. **Certified mail** — You may ask the clerk of the court to serve the defendant by certified mail. The clerk will charge a fee. You should check back with the court prior to the hearing to see if the receipt for certified mail was returned to the court. **Service by certified mail must be done by the clerk's office. You cannot serve the defendant this way yourself.**
4. **Substituted service** — This method lets you serve another person instead of the defendant. You must follow the procedures carefully. You may also wish to use the marshal or sheriff or a registered process server.

\* The \$5,000 limit does not apply, and a \$2,500 limit applies, if a "defendant guarantor . . . is required to respond based upon the default, actions, or omissions of another."

(Continued on reverse)

#### 4. **Substituted service** (*continued*)

A copy of your claim must be left

— at the defendant's business with the person in charge;

**OR**

— at the defendant's home with a competent person who is at least 18 years old. The person who receives the claim must be told about its contents. Another copy must be mailed, first class, postage prepaid, to the defendant at the address where the paper was left. The service is not complete until 10 days after the copy is mailed.

#### **WHAT IF THE DEFENDANT ALSO HAS A CLAIM?**

Sometimes the person who was sued (the **defendant**) will also have a claim against the person who filed the lawsuit (the **plaintiff**). This claim is called the *Defendant's Claim*. The defendant may file this claim in the same lawsuit. This helps to resolve all of the disagreements between the parties at the same time.

If the defendant decides to file the claim in the small claims court, the claim may not be for more than \$5,000 (\*see reverse). If the value of the claim is more than this

No matter which method of service you choose, the defendant must be served by a certain date or the trial will be postponed. If the defendant lives in the county, service must be completed at least 10 days before the trial date. This period is 15 days if the defendant lives outside the county.

The person who serves the defendant must sign a court paper showing when the defendant was served. This paper is called a *Proof of Service*. It must be signed and returned to the court clerk as soon as the defendant has been served.

amount, the defendant may either give up the amount over \$5,000 and sue in the small claims court or file a motion to transfer the case to the appropriate court for the full value of the claim.

The defendant's claim must be served on the plaintiff at least 5 days before the trial. If the defendant received the plaintiff's claim 10 days or less before the trial, then the claim must be served at least 1 day before the trial. Both claims will be heard by the court at the same time.

#### **WHAT HAPPENS AT THE TRIAL?**

Be sure you are on time for the trial. The small claims trial is informal. You must bring with you all witnesses, books, receipts, and other papers or things to prove your case. You may ask the witnesses to come to court voluntarily. You may also ask the clerk of the court to issue a **subpena**. A subpoena is a court order that *requires* the witness to go to trial. The witness has a right to charge a fee for going to the trial. If you do not have the records or papers to prove your case, you may also get a court order prior to the trial date

requiring the papers to be brought to the trial. This order is called a *Subpena Duces Tecum*.

If you settle the case before the trial, you must file a **dismissal** form with the clerk.

The court's decision is usually mailed to you after the trial. It may also be hand delivered to you in court when the trial is over and after the judge has made a decision. The decision appears on a form called the *Notice of Entry of Judgment*.

#### **WHAT HAPPENS AFTER JUDGMENT?**

The court may have ordered one party to pay money to the other party. The party who wins the case and collects the money is called the **judgment creditor**. The party who loses the case and owes the money is called the **judgment debtor**.

Enforcement of the judgment is **postponed** until the time for appeal ends or until the appeal is decided.

This means that the judgment creditor cannot collect any money or take any action until this period is over. Generally both parties may be represented by lawyers after judgment.

More information about your rights after judgment is available on the back of the *Notice of Entry of Judgment* form. The clerk may also have this information on a separate sheet.

#### **HOW TO GET HELP WITH YOUR CASE**

1. **Lawyers** — Both parties may ask a lawyer about the case, but a lawyer may not represent either party in court at the small claims trial. Generally, after judgment and on appeal, both parties may be represented by a lawyer.
2. **Interpreters** — If you do not speak English, you may take a family member or friend to court with you. The court should keep a list of interpreters who will interpret for you. Some interpreters charge a reasonable or no fee. If an interpreter is not available, the court must postpone the hearing one time only so that you have time to get one.
3. **Waiver of fees** — The court charges fees for some of its procedures. Fees are also charged for serving the defendant with the claim. The court may excuse you from paying these fees if you cannot afford them. Ask the clerk for the *Information Sheet on Waiver of Court Fees and Costs* to find out if you meet the requirements so that you do not have to pay the fees.
4. **Night and Saturday court** — If you cannot go to court during working hours, ask the clerk if the court has trials at **night** or on **Saturdays**.

5. **Parties who are in jail** — If you are in jail, the court may excuse you from going to the trial. Instead, you may ask another person who is not an attorney to go to the trial for you. You may mail written declarations to the court to support your case.
6. **Accommodations** — If you have a disability and need assistance, please ask the court immediately to help accommodate your needs. If you are hearing impaired and need assistance, please notify the court immediately.
7. **Small claims advisors** — The law requires each county to provide assistance in small claims cases free of charge. (*Small claims advisor information*):